

FILED

2009 DEC 16 PM 1:17  
CLERK, U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
RIVERSIDE

E. JEFFREY GRUBE (SB # 167324)  
jeffgrube@paulhastings.com  
JEFFREY P. MICHALOWSKI (SB# 248073)  
jeffmichalowski@paulhastings.com  
PAUL, HASTINGS, JANOFSKY & WALKER LLP  
55 Second Street  
Twenty-Fourth Floor  
San Francisco, CA 94105-3441  
Telephone: (415) 856-7000  
Facsimile: (415) 856-7100

Attorneys for Defendant  
UNITED PARCEL SERVICE, INC.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION

**ED CV 09 - 02279**

**VAP**

(DTBx)

JULIO C. DIAZ, individually and on  
behalf of others similarly situated,

Plaintiff,

vs.

UNITED PARCEL SERVICE, INC.,  
Defendant.

CASE NO.

**DECLARATION OF JEFFREY P.  
MICHALOWSKI IN SUPPORT OF  
REMOVAL OF CIVIL ACTION**

[San Bernardino County Superior Court  
Case No. CIVVS907417]

**BY FAX**

LEGAL\_US\_W# 63433417.1

CASE NO.

MICHALOWSKI DECLARATION ISO REMOVAL

**COPY**

1 I, Jeffrey P. Michalowski, declare and state as follows:

2  
3 1. I am an attorney licensed by the Bar of the State of California,  
4 and I am admitted to practice before this Court. I am an associate with the law firm  
5 of Paul, Hastings, Janofsky & Walker, counsel of record for Defendant United  
6 Parcel Service, Inc. ("UPS"), and I am one of the attorneys responsible for the  
7 defense of this action. I have personal knowledge of the facts set forth in this  
8 Declaration, and if called to testify under oath, could and would testify competently  
9 thereto.

10  
11 2. Plaintiff Julio C. Diaz, individually and on behalf of others  
12 similarly situated ("Plaintiff") served UPS, through its agent for service, via  
13 personal service, their Complaint ("Complaint") on or about November 16, 2009 in  
14 the Superior Court of the State of California in and for the County of San  
15 Bernardino entitled: "*Julio C. Diaz, individually and on behalf of others similarly*  
16 *situated, Plaintiff v. United Parcel Service, Inc., Defendant,*" designated as Case  
17 No. CIVVS907417. A true and correct copy of all process, pleadings, and orders  
18 served on UPS in the Superior Court are attached hereto as Exhibit 1.

19  
20 3. On December 15, 2009, prior to filing their Removal, UPS filed  
21 its Answer in the Superior Court of California in and for the County of San  
22 Bernardino. A true and correct copy of the Answer is attached hereto as Exhibit 2.

23  
24 4. Notice of this removal is being given both to the adverse parties  
25 and to the State Court pursuant to 28 U.S.C. section 1446(d). A true and correct  
26 copy of UPS's Notice to Adverse Parties of Removal and UPS's Notice to Superior  
27 Court of Removal to the United States District Court of the Central District of  
28 California, are attached hereto as Exhibits 3 and 4, respectively. Proof of service of

1 the Notice to Adverse Party of Removal and the Notice to Superior Court of  
2 Removal to Federal Court will be filed with this Court shortly after the Superior  
3 Court filing and service upon the adverse parties are accomplished.

4  
5 I declare under penalty of perjury under the laws of the State of  
6 California and the United States of America that the foregoing is true and correct.

7  
8 Executed on December 16, 2009 at San Francisco, California.

9  
10   
11 \_\_\_\_\_  
12 JEFFREY P. MICHALOWSKI  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT 1**

Gregory N. Karasik - State Bar No. 115834  
 SPIRO MOSS LLP  
 11377 W. Olympic Blvd., Fifth Floor  
 Los Angeles, California 90064-1683  
 Tel: (310) 235-2468  
 Fax (310) 235-2456  
 email: greg@spiro-moss.com

FILED BY FAX  
 CRC 2005

**FILED**  
 SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SAN BERNARDINO  
 VICTORVILLE DISTRICT

NOV 10 2009

BY Lisa Burnam  
 LISA BURNAM, DEPUTY

Shaun Setareh SBN 204514  
 LAW OFFICES OF SHAUN SETAREH  
 9454 Wilshire Boulevard, Penthouse Suite, # 3  
 Beverly Hills, California 90212  
 Tel: (310) 888-7771  
 Fax: (310) 888-0109  
 e-mail: setarehlaw@sbcglobal.net

Attorneys for Plaintiff  
 JULIO C. DIAZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 COUNTY OF SAN BERNARDINO  
 VICTORVILLE DISTRICT**

JULIO C. DIAZ, individually and on behalf of  
 others similarly situated,

Plaintiff,

vs.

UNITED PARCEL SERVICE, INC.,

Defendant.

CLASS ACTION

Case No.

**CIVVS907417**

**COMPLAINT FOR DAMAGES AND  
 RESTITUTION**

1. Failure to Provide Meal Periods
2. Unfair Competition

**DEMAND FOR JURY TRIAL**

Plaintiff JULIO C. DIAZ ("Plaintiff"), on behalf of himself and all others similarly  
 situated, complains and alleges as follows:

**INTRODUCTION**

1. This case arises out of the failure of defendant United Parcel Service, Inc. ("Defendant")  
 to provide meal periods to part time employees involved in unloading packages onto belts, sorting  
 packages on belts or sorting packages for placement on belts, loading packages from belts, or directly  
 supervising employees who load, sort, or unload packages ("Sort Operations") who, despite being  
 scheduled to work less than six hours a day, actually work more than six hours a day. Due to the nature

**COMPLAINT FOR DAMAGES AND RESTITUTION**

1 of Sort Operations, Defendant cannot provide employees who work in Sort Operations a 30 minute  
 2 meal period during which they are relieved from all duty. For this reason, Defendant schedules Sort  
 3 Operations employees to work less than six hours so that Defendant need not provide them with a meal  
 4 period. When Sort Operations employees do work more than six hours, Defendant's failure to provide  
 5 them with meal periods constitutes a violation of Labor Code Section 512 and Wage Order 9-2001  
 6 which entitles them to additional pay under Labor Code Section 226.7 and restitution of unpaid wages  
 7 under Business and Professions Code Section 17203.

8 2. Plaintiff is a member of and seeks to be the class representative for the Sort Operations  
 9 Class defined below in paragraph 9. As used herein, the general term "Class" includes Plaintiff and all  
 10 members of the Sort Operations Class.

11 3. Plaintiff seeks additional pay under Labor Code Section 226.7 and restitution under  
 12 Business and Professions Code Section 17203 to which Plaintiff and members of the Class are entitled.

### 13 JURISDICTION AND VENUE

14 4. Venue is proper in this Judicial district and the County of San Bernardino because work  
 15 was performed by Plaintiff and other members of the Class for Defendant in the County of San  
 16 Bernardino and Defendant's obligations to provide Class members with meal periods and additional  
 17 pay for missed meal periods in accordance with California law arose and were breached in the County  
 18 of San Bernardino.

19 5. The California Superior Court has jurisdiction in this matter because Plaintiff is a  
 20 resident of California, and Defendant is qualified to do business in California and regularly conducts  
 21 business in California. Further, there is no federal question at issue as the claims herein are based  
 22 solely on California law.

### 23 THE PARTIES

#### 24 A. Plaintiff

25 6. Plaintiff is a resident of Adelanto, California. Since approximately August 2008,  
 26 Plaintiff has regularly worked for Defendant five days a week as a part time loader in Ontario,  
 27 California with a job code other than H345. Although Plaintiff has been regularly scheduled to work  
 28 less than 6 hours a day, Plaintiff has worked more than 6 hours a day on many occasions. On the

1 occasions when Plaintiff worked more than six hours in a day, Defendant did not provide Plaintiff with  
 2 a 30 minute meal period during which Plaintiff was relieved from all duty. On the occasions when  
 3 Plaintiff worked more than six hours in a day and was not provided a duty free meal period, Defendant  
 4 did not pay Plaintiff an additional hour of pay for the missed meal period.

5 7. The members of the Class are identifiable, similarly situated persons who were  
 6 employed by Defendant in Sort Operations and not provided meal periods when they worked more than  
 7 six hours in a day and not paid additional wages for missed meal periods.

8 **B. Defendant**

9 8. Defendant is a corporation, organized and incorporated under the laws of the state of  
 10 Ohio which maintains its principal place of business in the state of Georgia. At all times relevant to this  
 11 action, Defendant conducted business operations and employed Plaintiff and other class members in the  
 12 state of California.

13 **CLASS ACTION ALLEGATIONS**

14 9. Plaintiff bring this action on behalf of himself and on behalf of all other similarly  
 15 situated persons as a class action pursuant to Code of Civil Procedure Section 382. The members of  
 16 the Class belong to the Sort Operations Class which is defined as follows:

17 **Sort Operations Class:** All part-time employees employed by Defendant in California  
 18 directly involved in unloading packages onto belts, sorting packages on belts or sorting  
 19 packages for placement on belts, loading packages from belts, or directly supervising  
 20 employees who load, sort, or unload packages, who ever worked more than six hours a  
 21 shift at any time since the date four years preceding the filing of the complaint in this  
 action, excluding persons with Job Codes H345, H325, H330, H335, H337, H340, 8171,  
 8172, H240 and 8180 whose claims are barred by the settlement in *Tejeda v. United*  
*Parcel Service, Inc.*, United States District Court, Central District of California, Case  
 No. CV 08-01490.

22 10. This action has been brought and may be maintained as a class action pursuant to Code  
 23 of Civil Procedure Section 382 because there is a well-defined community of interest among many  
 24 persons who comprise a readily ascertainable class.

25 a. The Class members are so numerous that the individual joinder of all of them as  
 26 named plaintiffs is impractical. While the exact number of Class members is  
 27 unknown to Plaintiff at this time, Plaintiff is informed and believe and thereon  
 28 alleges that there are not less than 75 members each in the Class.



1           b. Common questions of law and fact exist as to members of the Class and  
2           predominate over any questions which affect only individual members of the  
3           Class. These common questions include, but are not limited to:

- 4           (1) Did Defendant have a policy or practice of not providing members of the  
5           Class with meal periods when they worked more than six hours a day?  
6           (2) Did Defendant violate Labor Code Section 512 or Wage Order 9-2001 by  
7           failing to provide members of the Class with meal periods?  
8           (3) Is Defendant liable to members of the Class for additional wages under  
9           Labor Code Section 226.7?  
10          (4) Did Defendant violate the Unfair Competition Law, Business and  
11          Professions Code Section 17200, *et seq.*, by its unlawful practices as  
12          alleged herein?  
13          (5) Is Defendant liable to members of the Class for restitution of unpaid  
14          wages owed for missed meal periods?  
15          (6) Are Class members entitled to attorney's fees?

16          c. Plaintiff is a member of the Class and his claims are typical of the claims of the  
17          other Class members who he seeks to represent. Plaintiff has been subjected to  
18          the same unlawful practices as other employees of Defendant. Plaintiff and the  
19          other members of the Class suffered the same injuries and seek the same relief.

20          d. Plaintiff will adequately and fairly protect the interests of the members of the  
21          Class. Plaintiff has no interest adverse to the interests of absent Class members.  
22          Plaintiff is represented by legal counsel who have substantial class action  
23          experience in civil litigation and employment law.

24          e. A class action is superior to other available means for fair and efficient  
25          adjudication of the claims of the Class and would be beneficial for the parties and  
26          the court. Class action treatment will allow a large number of similarly situated  
27          persons to prosecute their common claims in a single forum, simultaneously,  
28          efficiently, and without the unnecessary duplication of effort and expense that



1 numerous individual actions would require. The monetary amounts due to many  
2 individual Class members are likely to be relatively small, and the burden and  
3 expense of litigation would make it difficult or impossible for Class members to  
4 seek and obtain relief through individual lawsuits. A class action will serve an  
5 important public interest by providing Class members an effective mechanism  
6 for pursuit of the sums owed to them.

7 11. Plaintiff is presently unaware of any difficulties that are likely to be encountered in the  
8 management of this action that would preclude its maintenance as a class action, but reserves the right  
9 to modify his allegations and/or class definitions based on further investigation, discovery or legal  
10 developments.

#### 11 FIRST CAUSE OF ACTION

#### 12 FAILURE TO PROVIDE MEAL PERIODS

13 (By Plaintiff and the Sort Operations Class against Defendants)

14 12. Plaintiffs incorporate paragraphs 1 through 11 of this complaint as if fully alleged herein.

15 13. At all relevant times, Plaintiff and the other members of the Sort Operations Class were  
16 employees of Defendant covered by Labor Code Sections 512 and 226.7 and Wage Order 9-2001.

17 14. Pursuant to Labor Code Sections 512 and 226.7 and Wage Order 9-2001, Plaintiff and  
18 other members of the Sort Operations Class were entitled to a duty free meal period of at least 30  
19 minutes for each workday they worked more than six hours.

20 15. Defendant failed to provide Plaintiff and other members of the Sort Operations Class  
21 duty free meal periods in accordance with Labor Code Sections 512 and 226.7 and Wage Order 9-2001.  
22 Plaintiff is informed and believes and thereon alleges that at all relevant times within the limitations  
23 period applicable to this cause of action, Defendant maintained a policy or practice of not providing  
24 members of the Sort Operations Class with a meal period when they worked more than six hours.

25 16. Pursuant to Labor Code Section 226.7 and Wage Order 9-2001, Plaintiff and other  
26 members of the Sort Operations Class were entitled to an additional hour of pay for every day  
27 Defendant did not provide a meal period.

28 17. Defendant failed to pay Plaintiff and other members of the Sort Operations Class the

1 additional hour of pay required by Labor Code Section 226.7 and Wage Order 9-2001. Plaintiff is  
 2 informed and believes and thereon alleges that at all relevant times within the applicable limitations  
 3 period, Defendant maintained a policy or practice of not paying additional pay for missed meal periods.

4 18. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Sort  
 5 Operations Class have suffered damages in an amount, subject to proof, to the extent they were not paid  
 6 additional pay owed for missed meal periods.

7 19. Pursuant to Labor Code Sections 218, 218.5, and 218.6, Plaintiff and other members of  
 8 the Sort Operations Class are entitled to recover the full amount of their unpaid additional pay, interest  
 9 thereon, reasonable attorney's fees and costs.

## 10 SECOND CAUSE OF ACTION

### 11 UNFAIR COMPETITION

12 (By Plaintiff and the Sort Operations Class against Defendants)

13 20. Plaintiff incorporates paragraphs 1 through 19 of this complaint as if fully alleged herein.

14 21. The unlawful conduct of Defendant alleged herein constitutes unfair competition within  
 15 the meaning of Business and Professions Code Section 17200. By failing to provide meal periods and  
 16 failing to pay additional wages for missed meal periods in violation of the Labor Code, Defendant has  
 17 gained a competitive advantage over other comparable companies doing business in the State of  
 18 California that comply with their legal obligations under the Labor Code.

19 22. As a result of Defendant's unfair competition as alleged herein, Plaintiff and other  
 20 members of the Sort Operations Class have suffered injury in fact and lost money or property. Plaintiff  
 21 and members of the Sort Operations Class were deprived of their right to take meal periods and were  
 22 not paid additional wages owed for missed meal periods.

23 23. Pursuant to Business and Professions Code Section 17203, Plaintiff and other members  
 24 of the Sort Operations Class are entitled to restitution of all monies rightfully belonging to them that  
 25 Defendant did not pay them but retained for itself by means of its unlawful business practices. Plaintiff  
 26 and other members of the Sort Operations Class had an ownership interest in all the monies owed to  
 27 them under the Labor Code.

28 24. Plaintiff and other members of the Sort Operations Class are entitled to recover

1 reasonable attorney's fees in connection with their unfair competition claims pursuant to Code of Civil  
2 Procedure Section 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, on behalf of himself and all others similarly situated, Plaintiff prays for  
5 judgment against Defendants as follows:

- 6 A. An order certifying this case as a class action;  
7 B. An order appointing Plaintiff and his counsel to represent the Class;  
8 C. Damages for unpaid wages under Labor Code Section 226.7;  
9 D. Restitution of all monies owed but unlawfully withheld and retained by Defendant under  
10 Business & Professions Code Section 17203;  
11 E. Prejudgment interest at the maximum legal rate;  
12 F. Reasonable attorney's fees;  
13 G. Costs of suit; and  
14 H. Such other relief as the Court may deem just and proper.

15 Dated: November 10, 2009

SPIRO MOSS LLP

16  
17 By: 

Gregory N. Karasik  
Attorneys for Plaintiff

18  
19  
20 **DEMAND FOR JURY TRIAL**

21 Plaintiff demands a trial by jury for herself and the Class on all claims so triable.

22 Dated: November 10, 2009

SPIRO MOSS LLP

23  
24 By: 

Gregory N. Karasik  
Attorneys for Plaintiff

**SUMMONS**  
(CITACION JUDICIAL)

SUM-100

**NOTICE TO DEFENDANT:**  
(AVISO AL DEMANDADO):

UNITED PARCEL SERVICE, INC.

**YOU ARE BEING SUED BY PLAINTIFF:**  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

JULIO C. DIAZ, individually and on behalf of others similarly situated

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
VICTORVILLE DISTRICT

NOV 10 2009

BY Lisa Burnam  
LISA BURNAM, DEPUTY

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

SAN BERNARDINO COUNTY SUPERIOR COURT - VICTORVILLE  
14455 Civic Center Drive, Victorville, California 92392

CASE NUMBER  
(Número del Caso) **CVWS907417**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Gregory N. Karasik of Spiro Moss LLP, 11377 W. Olympic Blvd., 5th Fl., Los Angeles, CA 90064

DATE:  
(Fecha)

11-10-09

Clerk, by  
(Secretario)

**L BURNAM**

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): United Parcel Service Inc

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):

4. ☐ by personal delivery on (date):

Page 1 of 1



CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>GREGORY N. KARASIK (SBN 115834)</b> <b>SPIRO MOSS LLP</b> <b>11377 W. Olympic Boulevard, 5th Floor</b>  <b>Los Angeles, California 90064</b> TELEPHONE NO.: (310) 235-2468 FAX NO.: (310) 235-2456 ATTORNEY FOR (Name): <b>Plaintiff</b>		FOR COURT USE ONLY  <b>FILED</b> SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN BERNARDINO VICTORVILLE DISTRICT  <b>NOV 10 2009</b> BY: <i>Lisa Burnam</i> <b>LISA BURNAM, DEPUTY</b>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 14455 Civic Center Drive MAILING ADDRESS: CITY AND ZIP CODE: <b>Victorville, California 92392</b> BRANCH NAME: <b>VICTORVILLE</b>		
CASE NAME: <b>DIAZ VS, UPS</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: <b>CIVVS907417</b> DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (48) <b>Other P/DPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (46) <input type="checkbox"/> Other P/DPD/WD (23) <b>Non-P/DPD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (05) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/DPD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	---

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply):  
 a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): Two (2)

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)  
 Date: November 10, 2006  
 GREGORY N. KARASIK (SBN 115834)  
 (TYPE OR PRINT NAME) *G. N. Karasik* (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

## NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

 Form Adopted for Mandatory Use  
 Judicial Council of California  
 CM-010 (Rev. July 1, 2007)

## CIVIL CASE COVER SHEET

 Cal. Rules of Court, rules 2.30, 3.220, 3.400-3.403, 3.740;  
 Cal. Standards of Judicial Administration, std. 3.10  
 SB-010

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (not asbestos or toxic/environmental) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (not medical or legal)  
Other Non-PI/PD/WD Tort (35)  
Employment  
Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (not unlawful detainer or wrongful eviction)  
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (not provisionally complex) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (non-domestic relations)  
Sister State Judgment  
Administrative Agency Award (not unpaid taxes)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (not specified above) (42)  
Declaratory Relief Only  
Injunctive Relief Only (non-harassment)  
Mechanics Lien  
Other Commercial Complaint Case (non-tort/non-complex)  
Other Civil Complaint (non-tort/non-complex)

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (not specified above) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief from Late Claim  
Other Civil Petition

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

JULIO C. DIAZ

Case No. \_\_\_\_\_

vs.

FILED BY FAX  
CRO 2005

CERTIFICATE OF ASSIGNMENT

UNITED PARCEL SERVICE, INC.

COPY

A civil action or proceeding presented for filing must be accompanied by this certificate. If the ground is the residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the VICTORVILLE District of the Superior Court under Rule 404 of this court for the checked reason:

☒ General☐ Collection

Nature of Action	Ground
<input type="checkbox"/> 1 Adoption	Petitioner resides within the district.
<input type="checkbox"/> 2 Conservator	Petitioner or conservatee resides within the district.
<input type="checkbox"/> 3 Contract	Performance in the district is expressly provided for.
<input type="checkbox"/> 4 Equity	The cause of action arose within the district.
<input type="checkbox"/> 5 Eminent Domain	The property is located within the district.
<input type="checkbox"/> 6 Family Law	Plaintiff, defendant, petitioner or respondent resides within the district.
<input type="checkbox"/> 7 Guardianship	Petitioner or ward resides within the district or has property within the district.
<input type="checkbox"/> 8 Harassment	Plaintiff, defendant, petitioner or respondent resides within the district.
<input type="checkbox"/> 9 Mandate	The defendant functions wholly within the district.
<input type="checkbox"/> 10 Name Change	The petitioner resides within the district.
<input type="checkbox"/> 11 Personal Injury	The injury occurred within the district.
<input type="checkbox"/> 12 Personal Property	The property is located within the district.
<input type="checkbox"/> 13 Probate	Decedent resided or resides within the district or had property within the district.
<input type="checkbox"/> 14 Prohibition	The defendant functions wholly within the district.
<input type="checkbox"/> 15 Review	The defendant functions wholly within the district.
<input type="checkbox"/> 16 Title to Real Property	The property is located within the district.
<input type="checkbox"/> 17 Transferred Action	The lower court is located within the district.
<input type="checkbox"/> 18 Unlawful Detainer	The property is located within the district.
<input type="checkbox"/> 19 Domestic Violence	The petitioner, defendant, plaintiff or respondent resides within the district.
<input checked="" type="checkbox"/> 20 Other Wage and Hour	Plaintiff resides within the district.
<input type="checkbox"/> 21 THIS FILING WOULD NORMALLY FALL WITHIN JURISDICTION OF SUPERIOR COURT.	

The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above-designated district is:

Julio C. Diaz - Plaintiff

18240 Delicious Street, Apt. 2

(NAME - INDICATE TITLE OR OTHER QUALIFYING FACTOR)

ADDRESS

Adelanto

California

92301

(CITY)

(STATE)

(ZIP CODE)

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed on

November 10, 2009

at

Los Angeles

, California

Signature of Attorney/Party



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

VICTORVILLE DISTRICT  
14455 CIVIC DRIVE  
VICTORVILLE, CA 92392

CASE NO: CIVVS907417

<http://www.sbcounty.gov/courts>

IN RE: DIAZ VS UPS

NOTICE OF CASE ASSIGNMENT FOR ALL PURPOSES  
NOTICE OF CASE MANAGEMENT CONFERENCE AND ORDER TO SHOW CAUSE  
REGARDING SERVICE OF SUMMONS AND COMPLAINT

PLEASE TAKE NOTICE, that the above-entitled case has been set for a Case Management Conference and an Order to Show Cause why the case should not be dismissed for failure to serve the summons and complaint. File your Case Management Statement with the court fifteen (15) calendar days prior to the hearing. Failure to appear may result in monetary sanctions and/or dismissal of your case. THIS CASE HAS BEEN ASSIGNED TO JUDGE STEVE C MALONE IN DEPARTMENT V10 FOR ALL PURPOSES.

The Order to Show Cause regarding service of summons is set: 02/22/10 at 8:30 in Department V10. If proof of service of summons and complaint has been filed before that date, no appearance is required at the time of the Order to Show Cause hearing. The Case Management Conference is set: 04/20/10 at 8:30 in Department V10.

TO THE PARTY SERVED: The setting of these dates DOES NOT increase the time you have to respond to the complaint. The time for response is clearly stated on the Summons.

A COPY OF THIS NOTICE MUST BE SERVED ON ALL DEFENDANTS

Tressa S. Kentner, Clerk of the Court

Date: 11/10/09

By: LISA BURNAM

CERTIFICATE OF SERVICE

I am a Deputy Clerk of the Superior Court for the County of San Bernardino at the above listed address. I am not a party to this action and on the date and place shown below, I served a copy of the above listed notice by:

( ) Enclosed in an envelope mailed to the interested party addressed above, for collection and mailing this date, following ordinary business practice.

( ) Enclosed in a sealed envelope, first class postage prepaid in the U.S. mail at the location shown above, mailed to the interested party and addressed as shown above, or as shown on the attached listing.

( ) A copy of this notice was given to the filing party at the counter.

( ) A copy of this notice was placed in the bin located at this office and identified as the location for the above law firm's collection of file stamped documents.

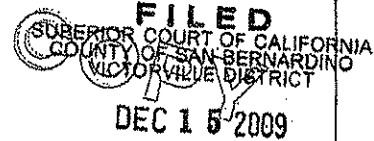
DATE OF MAILING: 11/10/09

I declare under penalty of perjury that the foregoing is true and correct. Executed on 11/10/09 at Victorville, CA By: LISA BURNAM

# **EXHIBIT 2**

1 E. JEFFREY GRUBE (SB # 167324) jeffgrube@paulhastings.com  
JEFFREY P. MICHALOWSKI (SB# 248073) jeffmichalowski@paulhastings.com  
2 PAUL, HASTINGS, JANOFSKY & WALKER LLP  
3 55 Second Street  
Twenty-Fourth Floor  
San Francisco, CA 94105-3441  
4 Telephone: (415) 856-7000  
Facsimile: (415) 856-7100

5 Attorneys for Defendant  
6 UNITED PARCEL SERVICE, INC.



BY Jessica Hazel DEPUTY

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO  
9 VICTORVILLE DISTRICT

11 JULIO C. DIAZ, individually and on behalf of  
others similarly situated,

12 Plaintiff,

13 vs.

14 UNITED PARCEL SERVICE, INC.,

15 Defendant.

CASE NO. CIV-VS-907417

[Assigned for all purposes to  
Judge Steve C. Malone—Dept. V10]

ANSWER TO COMPLAINT

17  
18 Defendant UNITED PARCEL SERVICE, INC. ("Defendant"), for itself alone and  
19 no other defendant, hereby answers the unverified Complaint ("Complaint") of Plaintiff JULIO  
20 DIAZ ("Plaintiff") as follows:

21  
22 1. Pursuant to Section 431.30(d) of the California Code of Civil Procedure,  
23 Defendant denies, generally and specifically, each and every allegation in Plaintiff's Complaint.

24 2. Defendant further denies, generally and specifically, that Plaintiff is  
25 entitled to the relief requested, or that Plaintiff has been or will be damaged in any sum, or at all,  
26 by reason of any act or omission on the part of Defendant, or any of its past or present agents,  
27 representatives, or employees.

28 LEOAL\_US\_W # 63432952.1

ANSWER TO COMPLAINT

1 Without admitting any facts alleged by Plaintiff, Defendant also pleads the  
2 following separate and affirmative defenses to the Complaint:  
3

4  
5 AFFIRMATIVE DEFENSES

6 FIRST SEPARATE AND AFFIRMATIVE DEFENSE  
7

8 3. The Complaint, and each of its causes of action, fails to state facts  
9 sufficient to constitute a cause of action.  
10

11 SECOND SEPARATE AND AFFIRMATIVE DEFENSE  
12

13 4. The Complaint, and each of its causes of action, is barred in whole or in  
14 part by all applicable statutes of limitation, including but not limited to Cal. Civ. P. Code §§ 337,  
15 338(a), Cal. Bus. & Prof. Code § 17208, and Cal. Lab. Code §§ 203 and/or 226.  
16

17 THIRD SEPARATE AND AFFIRMATIVE DEFENSE  
18

19 5. The Complaint, and each of its causes of action, is barred to the extent  
20 Plaintiff, or any purported class members, released claims individually or in conjunction with  
21 class action and/or other settlements and judgments.  
22

23  
24 FOURTH SEPARATE AND AFFIRMATIVE DEFENSE  
25

26 6. The Complaint and each cause of action alleged therein is barred to the  
27 extent that Plaintiff and/or any class member he purports to represent waived the right, if any, to  
28 pursue the Complaint.

LEGAL\_US\_W # 63432952.1

-2-

ANSWER TO COMPLAINT

Michalowski Decl 0016

1 FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

2  
3 7. Plaintiff's second cause of action under California Business and  
4 Professions Code section 17200 *et seq.* is barred because California Business and Professions  
5 Code section 17200 *et seq.*, as stated and as sought to be applied, violates Defendant's rights  
6 under the United States Constitution and the California Constitution in that, among other things, it  
7 is void for vagueness, violative of equal protection, violative of due process, an undue burden  
8 upon interstate commerce, and violative of the freedom of contract.

9  
10 SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

11  
12 8. Plaintiff's second cause of action under California Business and  
13 Professions Code section 17200 *et seq.* violates Defendant's rights to due process under the  
14 United States Constitution and the California Constitution to the extent that the cause of action  
15 does not afford defendant the protections against multiple suits and duplicative liability ordinarily  
16 provided by class actions.

17  
18 SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

19  
20 9. The Complaint, and each cause of action therein, is preempted by section  
21 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a).

22  
23 EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

24  
25 10. The Complaint, and each cause of action therein, is barred by the statute of  
26 limitations applicable to claims arising under section 301 of the Labor Management Relations  
27 Act, 29 U.S.C. § 160(b).

1 NINTH SEPARATE AND AFFIRMATIVE DEFENSE

2  
3 11. The sole and exclusive remedy for the allegations made in the Complaint is  
4 the CBA's grievance and arbitration procedures.  
5

6 TENTH SEPARATE AND AFFIRMATIVE DEFENSE

7  
8 12. Plaintiff's Complaint, and each cause of action therein, is barred because  
9 Plaintiff failed to exhaust the CBA's grievance and arbitration procedures.  
10

11 ELEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

12  
13 13. The Complaint, and each cause of action contained therein, is barred by the  
14 doctrine of res judicata to the extent any member of the purported class pursued and resolved to  
15 final judgment, individually or as a member of a class or collective action, any action that did or  
16 could have included the claims herein.  
17

18 TWELFTH SEPARATE AND AFFIRMATIVE DEFENSE

19  
20 14. Plaintiff's cause of action for meal period violations is barred to the extent  
21 that Plaintiff, and the group of persons he purports to represent, waived their meal periods.  
22

23 THIRTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

24  
25 15. Plaintiff has failed to satisfy the prerequisites for class certification and  
26 therefore cannot represent the interests of others.  
27  
28

1                   FOURTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

2  
3           16.     The Complaint is not proper for treatment as a class or collective action;  
4 Plaintiff therefore lacks standing to represent the individuals they purport to represent.  
5

6                   FIFTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

7  
8           17.     Plaintiff's request for class certification should be denied because class  
9 certification would be inappropriate due to conflicts of interest between Plaintiffs and proposed  
10 class members.  
11

12                   SIXTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

13  
14           18.     Plaintiff's request for class certification should be denied because liability  
15 and/or damages, if any, to each member of the proposed class may not be determined by a single  
16 factfinder or on a group-wide basis, and therefore allowing this action to proceed as a class or  
17 collective action would violate Defendant's rights to due process and trial by jury.  
18

19                   SEVENTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

20  
21           19.     In the event that a class should be certified in this matter, Defendant  
22 incorporates by reference and realleges all of its defenses to Plaintiff's individual causes of action  
23 in response to Plaintiff's causes of action on behalf of the class and each class member.  
24  
25  
26  
27  
28



1 EIGHTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

2  
3 20. The Complaint and each of its causes of action are barred in whole or in  
4 part to the extent that Defendant has paid Plaintiff and/or putative class members all or some of  
5 the money they claim is due.  
6

7 NINETEENTH SEPARATE AND AFFIRMATIVE DEFENSE

8  
9 21. The Complaint, and each cause of action contained therein, is barred to the  
10 extent any member of the purported class entered into an accord of any cause of action asserted in  
11 this lawsuit, which accord has been satisfied.  
12

13 TWENTIETH SEPARATE AND AFFIRMATIVE DEFENSE

14  
15 22. Defendant is entitled to an offset against any relief claimed by Plaintiff  
16 and/or the class he purports to represent for wages Defendant has paid for time not worked or that  
17 otherwise is not required under state and/or federal law.  
18

19 TWENTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE

20  
21 23. Plaintiff has failed to mitigate or make reasonable efforts to mitigate his  
22 alleged damages, and Plaintiff's recovery of damages, if any, must be barred or reduced  
23 accordingly.  
24  
25  
26  
27  
28

1 TWENTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE

2  
3 24. Neither Plaintiff nor the class he purports to represent may recover  
4 damages in this action because under the circumstances presented that would constitute unjust  
5 enrichment.  
6

7 TWENTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE

8  
9 25. Plaintiff's claim for injunctive or other equitable relief is barred because  
10 Plaintiffs have an adequate and complete remedy at law.  
11

12 WHEREFORE, Defendant prays for judgment as follows:  
13

- 14 1. That class certification be denied;  
15 2. That Plaintiffs take nothing by reason of their Complaint, that the  
16 Complaint be dismissed in its entirety with prejudice, and that judgment be entered for  
17 Defendant;  
18 3. That Defendant be awarded its reasonable costs and attorneys' fees; and  
19 4. That Defendant be awarded such other and further relief as the Court  
20 deems just and proper.  
21

22 DATED: December 15, 2009

PAUL, HASTINGS, JANOFSKY & WALKER LLP

23  
24 By: 

25 JEFFREY P. MICHALOWSKI

26 Attorneys for Defendant  
27 UNITED PARCEL SERVICE, INC.  
28

**PROOF OF SERVICE**

I, the undersigned, state:

I am employed in the City and County of San Francisco, State of California. I am over the age of 18 years, and not a party to the within action. My business address is Paul, Hastings, Janofsky & Walker LLP, 55 Second Street, Suite 2400, San Francisco, CA 94105.

On December 15, 2009, I served the foregoing document(s) described as:

**ANSWER TO COMPLAINT**

on the interested parties by placing a true and correct copy thereof in a sealed envelope(s) addressed as follows:

Gregory N. Karasik, Esq.  
Spiro Moss LLP  
11377 W. Olympic Blvd., Fifth Floor  
Los Angeles, CA 90064-1683  
Telephone: (310) 235-2468  
Facsimile: (310) 235-2456  
Email: greg@spiomoss.com

*Co-Counsel for Plaintiff*  
*Julio C. Diaz*

Shaun Setareh, Esq.  
Law Offices of Shaun Setareh  
9454 Wilshire Blvd., Penthouse Suite #3  
Beverly Hills, CA 90212  
Telephone: (310) 888-7771  
Facsimile: (310) 888-0109  
Email: setarehlaw@sbcglobal.net

*Co-Counsel for Plaintiff*  
*Julio C. Diaz*

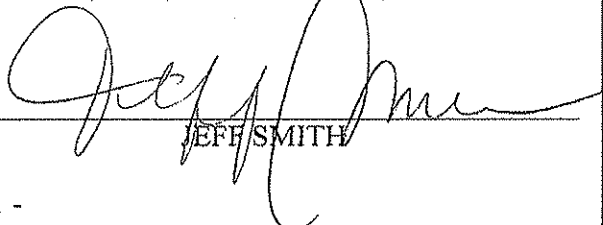
☐ **VIA UPS OVERNIGHT MAIL:** By delivering such document(s) to an overnight mail service or an authorized courier in a sealed envelope or package designated by the express service courier addressed to the person(s) on whom it is to be served.

☒ **VIA U.S. MAIL:** I am readily familiar with Paul, Hastings, Janofsky & Walker LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **VIA PERSONAL DELIVERY:** I personally caused to be delivered such sealed envelope(s) by hand to the offices of the addressee(s) listed above.

☐ **VIA FACSIMILE:** The facsimile transmission report indicated that the transmission was complete and without error. The facsimile was transmitted to the facsimile numbers indicated above on \_\_\_\_\_.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 15, 2009, at San Francisco, California.

  
JEFF SMITH

LEGAL\_US\_W # 63317528.1

- 1 -

CASE NO. CIV-VS-907417

PROOF OF SERVICE

# **EXHIBIT 3**

1 E. JEFFREY GRUBE (SB # 167324) jeffgrube@paulhastings.com  
JEFFREY P. MICHALOWSKI (SB# 248073) jeffmichalowski@paulhastings.com  
2 PAUL, HASTINGS, JANOFISKY & WALKER LLP  
3 55 Second Street  
Twenty-Fourth Floor  
4 San Francisco, CA 94105-3441  
Telephone: (415) 856-7000  
5 Facsimile: (415) 856-7100  
6 Attorneys for Defendant  
UNITED PARCEL SERVICE, INC.

7  
8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO  
9 VICTORVILLE DISTRICT

10  
11 JULIO C. DIAZ, individually and on behalf of  
others similarly situated,

12 Plaintiff,

13 vs.

14 UNITED PARCEL SERVICE, INC.,

15 Defendant.  
16

CASE NO. CIV-VS-907417

[Assigned for all purposes to  
Judge Steve C. Malone—Dept. V10]

**NOTICE TO ADVERSE PARTIES OF  
REMOVAL OF CIVIL ACTION**

17 TO PLAINTIFF JULIO C. DIAZ AND HIS ATTORNEYS OF RECORD:

18 PLEASE TAKE NOTICE THAT a Notice of Removal of this action was filed in  
19 the United States District Court for the Central District of California on December 16, 2009. A  
20 copy of the Notice of Removal is attached to this Notice as Exhibit "A" and is served and filed  
21 herewith.

22 The filing of said Notice of Removal effects the removal of the above-entitled  
23 action from this Court.

24 DATED: December 16, 2009

PAUL, HASTINGS, JANOFISKY & WALKER LLP

25 By: 

26 JEFFREY P. MICHALOWSKI

27 Attorneys for Defendant  
UNITED PARCEL SERVICE, INC.  
28

# **EXHIBIT 4**

1 E. JEFFREY GRUBE (SB # 167324) jeffgrube@paulhastings.com  
JEFFREY P. MICHALOWSKI (SB# 248073) jeffmichalowski@paulhastings.com  
2 PAUL, HASTINGS, JANOFISKY & WALKER LLP  
55 Second Street  
3 Twenty-Fourth Floor  
San Francisco, CA 94105-3441  
4 Telephone: (415) 856-7000  
Facsimile: (415) 856-7100

5 Attorneys for Defendant  
6 UNITED PARCEL SERVICE, INC.

7  
8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO  
9 VICTORVILLE DISTRICT

10  
11 JULIO C. DIAZ, individually and on behalf of  
others similarly situated,

12 Plaintiff,

13 vs.

14 UNITED PARCEL SERVICE, INC.,

15 Defendant.  
16

CASE NO. CIV-VS-907417

[Assigned for all purposes to  
Judge Steve C. Malone—Dept. V10]

**NOTICE TO SUPERIOR COURT OF  
REMOVAL OF CIVIL ACTION**

17 TO THE CLERK OF THE SUPERIOR COURT FOR THE COUNTY OF SAN BERNARDINO:

18 Attached hereto as Exhibit "A" is a true and correct copy of the Notice of Removal  
19 of Civil Action ("Notice of Removal") to the United States District Court, the original of which  
20 was filed with the United States District Court for the Central District of California on  
21 December 16, 2009.

22 The filing of said Notice of Removal effects the removal of the above-entitled  
23 action from this Court.

24 DATED: December 16, 2009

PAUL, HASTINGS, JANOFISKY & WALKER LLP

25 By: 

26 JEFFREY P. MICHALOWSKI

27 Attorneys for Defendant  
28 UNITED PARCEL SERVICE, INC.